APPENDIX.

Illinois Statute Relating to Reorganization of a Corporation

"When a compromise or reorganization of the corporation is proposed, whether the suit shall have been instituted by a shareholder or by a creditor, the court, upon the summary application of any shareholder, or creditor, or receiver may order a meeting of the creditors or shareholders to be summoned in such manner as the court may direct. If a majority in number representing three-fourths in value of the creditors or the holders of three-fourths of the shares entitled to vote thereon, or both, or if a majority in number representing three-fourths in value of any class of creditors, or if the holders of three-fourths of the shares of any class, as the case may be, agree to any compromise or reorganization of the corporation, such compromise or reorganization, if approved by the court, shall be binding on all creditors or on all shareholders, or both, or on the class of creditors or class of shareholders, or both, as the case may be, and also on the corporation and its receivers, if any." Sec. 90 (c), Illinois Business Corporation Act, Smith-Hurd Ann. Stat. Ill., Ch. 32, Sec. 157.90 (c).

In view of the attack on the Illinois reorganization procedure, we call attention to the fact that the statute above quoted is based on Sec. 153 of the English Companies Act of 1929, and on Sec. 59 of the Uniform Business Corporation Act. The Delaware Act. Sec. 5 (9), is similar in its terms. The English statute is the result of many years of

experience in that country with reorganization and the Uniform Act represents the best thinking of many able American lawyers on the subject. Sec. 90 (c) is, in every jurisdiction, regarded as endowing equity courts, with ample powers to reorganize any industrial corporation within its jurisdiction and to protect fully all minority interests. Criticism in the brief of *Amicus Curiae* is obviously ill-advised, and the cases cited are against, not for, the contention there made.

The case of *First National Bank* v. *Bryn Mawr Bldg. Corp.*, 365 Ill. 409 (1937), is a complete refutation of the theoretical attack on the powers of equity courts in Illinois to control and supervise completely every detail in reorganization and to protect fully all minority interests. There the fairness of the plan approved was attacked and sustained, as was also the fairness of the sale. The jurisdiction of the court to entertain a plan of reorganization, proposed long after the foreclosure proceeding was begun, was upheld in all respects. The case stands as an unshakable landmark in the law against every claim that the minority could not or cannot be fully protected in the state proceeding, through the filing of a plan or otherwise, should they feel the need.

This reorganization statute gives the chancery court in Illinois *all* the powers of the federal court in relation to the reorganization of a corporation, whether initiated as a reorganization or the reorganization takes place in connection with a foreclosure proceeding, as indicated in *First National Bank* v. *Bryn Mawr Bldg. Corporation*, 365 Ill. 409.

APPENDIX B.

Powers of Equity Courts in Illinois.

These propositions are settled law in Illinois and bear directly upon the powers of equity, both under and independently of statute, to control the disposition of property in a foreclosure or a reorganization proceeding in that state:

1. The "equity powers of state courts are no more limited than those of the Federal courts, and * * * equity jurisdiction over mortgage foreclosure is general rather than limited or statutory." *Levy* v. *Broadway-Carmen Bldg. Corp.*, 366 Ill. 290 (1937).

2. The jurisdiction is not limited to the sale of the property. "If it may reasonably be seen that the exercise of the jurisdiction of a court of equity beyond the sale of the property will result in better protection to parties before it, it would seem not only to be germane to matters of undisputed jurisdiction, but to make for the highest exercise of the Court's admitted functions." *Ibid.*, p. 290.

3. "A court of equity has jurisdiction, in connection with an application for approval of a foreclosure sale, to approve a reorganization plan submitted by a bondholders' committee." *Ibid.*, p. 290; *First National Bank* v. *Bryn Mawr Beach Bldg. Corp.*, 365 Ill. 409.

4. In connection with a foreclosure or a reorganization, the court may fix an up-set price for the sale of the property *Levy* v. *Broadway-Carmen Bldg. Corp.*, 366 Ill. 289.

5. The control of equity over the sale under a foreclosure is sweeping and complete. "Unfairness from any cause which operates to the prejudice of an interested party, will abundantly justify a chancery court in refusing to approve a sale." *Ibid.*, 287.

6. "Confirmation (of a sale)is a final consent, and the court, being in fact the vendor, may consent or not, *in its discretion.*" *Ibid.*, 286.

7. "If the plan (of reorganization) is unfair, or appellants are in danger of being 'frozen out,' a court of equity should extend its aid to those who, by reason of their numbers and widely scattered abodes, are unable to protect themselves against an unconscionable plan or a scheme to prevent the sale of the property at a fair price." *First National Bank* v. *Bryn Mawr Bldg.*, 365 Ill. 420.

8. The equity court has complete control over bondholders' committees and "the supervision of a court of equity for the protection of all bondholders" is complete as it is in the federal courts. *Ibid.*, 423.

9. In Illinois, as in the federal bankruptcy court, "The court is concerned with the fairness of the bids as to those bondholders who have not adopted the plan." *Ibid.*, 426.

10. The court under Sec. 90 (c) and under its general equity powers can issue process to all security holders and can make them parties by representation; in the case of a suit by an indenture trustee to foreclose, all secured bondholders are represented by him. *Ibid.*, 431.

11. To which we now add the following: "It is not pointed out wherein equity jurisdiction and powers of state courts are to be considered more limited than those of the Federal courts." *Ibid.*, p. 417.